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*Attorneys for Plaintiff and the Proposed Class*

**IN THE UNITED STATES DISTRICT COURT  
CENTRAL DISTRICT OF CALIFORNIA**

STEVEN C. HUFFORD, on behalf of  
himself and all others similarly  
situated,

Plaintiffs,

v.

KIA AMERICA, INC., and  
HYUNDAI MOTOR AMERICA,

Defendants.

Case No.:

**CLASS ACTION COMPLAINT**

**JURY TRIAL DEMANDED**

1 Plaintiff, Steven C. Hufford, through his attorneys, brings this Class Action  
2 Complaint against the Defendants, Kia America, Inc. (“Kia”), and Hyundai Motor  
3 America (“Hyundai”) (together “Defendants”), and their present, former, or future  
4 direct and indirect parent companies, subsidiaries, affiliates, agents, and/or other  
5 related entities, alleging as follows:

### 6 INTRODUCTION

7 1. Kia and Hyundai vehicles suffer from a defect that allows anyone with  
8 a USB cable to steal them.

9 2. The defect stems from a design flaw in Kia and Hyundai vehicles,  
10 which do not include engine immobilizers.

11 3. An immobilizer is an electronic device that prevents a vehicle from  
12 starting without the right key in the ignition.

13 4. Because Kia and Hyundai vehicles do not have immobilizers, a thief  
14 need only pop off a plastic cover on the steering column, plug a USB cable into the  
15 column, and turn it like any other key to start the engine, as depicted below:



27  
28 5. Once thieves discovered this vulnerability, it set off a rash of vehicle  
CLASS ACTION COMPLAINT - 1

1 thefts across the country, accounting for nearly two-thirds of vehicle thefts in  
2 Milwaukee, Wisconsin. Indeed, in the first six months of 2021 alone, Hyundai thefts  
3 in Milwaukee increased by 1,700% and Kia thefts increased by 3,200%.<sup>1</sup>

4 6. The trend is spreading across the country, including Los Angeles,  
5 where affected model thefts are up 85%, and Chicago, where affected model thefts  
6 are up by 800%, with “no end in sight.”<sup>2</sup> As of this month, 23 Kias are being stolen  
7 in St. Louis every day.<sup>3</sup>

8 7. In fact, Kia and Hyundai’s vehicles are so easy to steal, teenagers and  
9 children as young as 11 years old are stealing and joyriding consumers’ cars,  
10 posting their exploits on social media, including one TikTok video that has over 33  
11 million views.

12 8. Every Kia and Hyundai model from 2011-2021 suffers from this  
13 defect, meaning it affects vehicles across the country and exposes its owners to  
14 theft, property damage, and harm.

15 9. Defendants have known about this defect for years, including the  
16 alarming rate at which their vehicles were being stolen. Even so, Defendants did  
17 not fix the defect or install immobilizers in their vehicles. In fact, on information  
18 and belief, Defendants concealed the defect from consumers or otherwise failed to  
19 disclose, reveal, or provide notice to them that their vehicles were defective and  
20 unfit for the ordinary purposes for which they are used.

21 10. This is despite Defendants’ duty to comply with federal regulation that  
22  
23

24  
25 <sup>1</sup> See “Milwaukee Police Report Hyundais, Kias Stolen in Record Numbers” at <https://www.kbb.com/car-news/milwaukee-police-report-hyundais-kias-stolen-in-record-numbers/> (last visited Sept. 12, 2022).

26 <sup>2</sup> See “TikTok challenge spurs rise in thefts of Kia, Hyundai cars” at <https://www.cnn.com/2022/09/08/tiktok-challenge-spurs-rise-in-thefts-of-kia-hyundai-cars.html> (last visited Sept. 12, 2022).

27  
28 <sup>3</sup> See <https://www.bizjournals.com/stlouis/news/2022/09/02/hyundai-kia-thefts-insurance-appraisal-industry.html> (last visited Sept. 12, 2022).

1 requires manufacturers like Defendants to install ignition systems that will not  
2 operate without the right key inserted into the ignition: “Each vehicle must have a  
3 starting system which, whenever the key is removed from the starting system  
4 prevents: (a) The normal activation of the vehicle's engine or motor; and (b) Either  
5 steering, or forward self-mobility, of the vehicle, or both.” Federal Motor Vehicle  
6 Safety Standard (“FMVSS”) 114.

7 11. Now that auto thefts are sweeping the country, Defendants have  
8 acknowledged the problems they created and have promised to equip new vehicles  
9 with immobilizers.<sup>4</sup>

10 12. But equipping new vehicles will not address the harm Defendants’  
11 defective vehicles cause consumers like Plaintiff Hufford, who purchased a 2021  
12 Hyundai Venue trusting that it would be safe, reliable, and equipped with adequate  
13 security.

14 13. At the time Plaintiff Hufford purchased his vehicle, he was unaware  
15 that it was susceptible to theft, unsafe, and unfit for the purpose for which he bought  
16 the vehicle, and Hyundai never informed him that it knew his vehicle was  
17 susceptible to theft.

18 14. As a result, Plaintiff Hufford sues Defendants in a class action on  
19 behalf of all consumers harmed by their misconduct, seeking relief including  
20 damages and injunctive relief to require that Defendants address the harm that their  
21 vehicles are causing.

## 22 **PARTIES**

23 15. Plaintiff, Steven C. Hufford, is a resident and citizen of Arnold,  
24  
25

26  
27  
28 <sup>4</sup> See “Kia, Hyundai Thefts Now National Problem” at <https://urbanmilwaukee.com/2022/08/17/kia-hyundai-thefts-now-national-problem/> (last visited Sept. 12, 2022).

1 Missouri, where he intends to remain.

2 16. Kia is a California corporation with a principal address and place of  
3 business at 111 Peters Canyon Road, Irvine, CA 92606.

4 17. Hyundai is a California corporation with a principal address and place  
5 of business at 10550 Talbert Avenue, Fountain Valley, CA 92708.

6 **JURISDICTION & VENUE**

7 18. This Court has subject matter jurisdiction over this action under 28  
8 U.S.C. § 1332(d)(2), as amended by the Class Action Fairness Act of 2005, because  
9 the amount in controversy exceeds \$5,000,000, exclusive of interests and costs, and  
10 because this is a class action in which the members of the classes and Defendants  
11 are citizens of different states. This Court also has supplemental jurisdiction over  
12 the state law claims pursuant to 28 U.S.C. § 1367.

13 19. This Court has personal jurisdiction over Defendants in that  
14 Defendants transact business within the state of California and committed one or  
15 more tortious acts within the state of California.

16 20. Defendants transacted business and/or committed tortious acts within  
17 the state of California. Defendants design, manufacture, distribute, and/or sell  
18 dangerous and/or defective vehicles in California. Defendants placed the defective  
19 and dangerous products into the stream of commerce, sold and/or supplied said  
20 products for use, used said products, and/or transacted business and committed  
21 tortious acts in California from which Plaintiff's claims arise.

22 21. Venue is proper in this judicial district under 28 U.S.C. § 1391 because  
23 Defendants are citizens of California with headquarters located in this district.

24 **BACKGROUND FACTS**

25 22. Defendants manufacture vehicles for sale in California, Missouri, and  
26 across the country.  
27

23. In so doing, Defendants must comply with FMVSS 114, which requires that “Each vehicle must have a starting system which, whenever the key is removed from the starting system prevents: (a) The normal activation of the vehicle's engine or motor; and (b) Either steering, or forward self-mobility, of the vehicle, or both.”

24. Manufacturers generally comply with this requirement by installing immobilizers on their vehicles.

25. An immobilizer is an electronic device that prevents a vehicle from starting without the right key inserted to the vehicle’s ignition system.

26. Immobilizers deter auto theft. In fact, a 2016 study revealed that immobilizers lowered the overall rate of car thefts by 40% over a ten-year period.<sup>5</sup>

27. In fact, Kia’s own vehicle handbooks explain that immobilizers reduce the risk for theft:<sup>6</sup>

#### Immobilizer system

Your vehicle may be equipped with an electronic engine immobilizer system to reduce the risk of unauthorized vehicle use.

28. Even so, Defendants have not installed immobilizers on all models manufactured between 2011-2021 (“Class Vehicles”). On information and belief, Defendants did not do this even though Defendants know immobilizers reduce auto theft, as they have been selling identical vehicles with immobilizers in other countries that require immobilizer technology.

<sup>5</sup> See Jan C. van Ours & Ben Vollaard, The Engine Immobilizer: A Non-Starter For Car Thieves, THE ECONOMIC JOURNAL, Vol. 126, No. 593, 1264, 1283 (June 2016).

<sup>6</sup> See Kia’s page on the “Immobilizer System” at [https://www.kia.com/content/dam/kia2/in/en/content/seltos-manual/topics/chapter4\\_1\\_5.html#:~:text=With%20the%20immobilizer%20system%2C%20whenever,the%20engine%20will%20not%20start](https://www.kia.com/content/dam/kia2/in/en/content/seltos-manual/topics/chapter4_1_5.html#:~:text=With%20the%20immobilizer%20system%2C%20whenever,the%20engine%20will%20not%20start). (last visited Sept. 12, 2022).



1           29. As a result, Defendants have left the Class Vehicles unguarded targets  
2 for theft—leading to a known defect (“Defect”) and creating risks for property  
3 damage, rendering them unsafe, and diminishing the value of the cars.

4           30. Children as young as 11 years old have exploited the vulnerability in  
5 the Class Vehicles, which allows them to steal a defective vehicle by merely  
6 removing the steering panel, expose the ignition system, and plugging in a USB  
7 cable to the ignition switch, which allows them to start vehicles without a key:<sup>7</sup>



17

18           31. Stealing Class Vehicles is so easy and popular it has led to viral videos  
19 on social media, including a TikTok video with 33 million views and a  
20 “documentary” featuring the “Kia Boys,” a group of teenagers who steal the Class  
21 Vehicles and joyride them.<sup>8</sup>

22           32. As described above, the Class Vehicles vulnerability led to a rash of  
23

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26 <sup>7</sup> See “How Thieves Are Stealing Hyundais and Kias With Just a USB Cable” at  
<https://www.thedrive.com/news/how-thieves-are-stealing-hyundais-and-kias-with-just-a-usb-cable> (last visited Sept.  
27 12, 2022).

28 <sup>8</sup> See “TikTok challenge spurs rise in thefts of Kia, Hyundai cars” at <https://www.cnn.com/2022/09/08/tiktok-challenge-spurs-rise-in-thefts-of-kia-hyundai-cars.html> (last visited Sept. 12, 2022).

1 thefts, exploding auto theft rates in cities nationwide, leading to an 85% increase in  
2 Class Vehicle theft in Los Angeles, 800% in Chicago, and more than 1,700% for  
3 Kia thefts and 3,200% for Hyundai thefts in Milwaukee.

4 33. Repair shops and dealers cannot keep pace with the demand caused by  
5 the spike in Class Vehicle theft, as there is a shortage for the parts needed to repair  
6 them. Some parts are backordered up to eight weeks, impairing Class members'  
7 ability to fix stolen vehicles.<sup>9</sup>

8 34. What's more, auto insurers have stopped insuring the Class Vehicles  
9 or increased premiums to insure them, citing the "epidemic" in claims for thefts and  
10 property damage to Class Vehicles.<sup>10</sup>

11 35. Altogether, the Defect damages Plaintiff and the Class by rendering  
12 their vehicles easy to steal, unsafe, and worth less than they should be, if they did  
13 not have the Defect.

14 36. Plaintiff is a Class member and Class Vehicle owner. In April 2021,  
15 Plaintiff purchased a 2021 Hyundai Venue from the Dean Team Hyundai  
16 Dealership, in Ballwin, Missouri.

17 37. Plaintiff's vehicle suffers from the Defect affecting Defendants' Class  
18 Vehicles, which he confirmed by calling Hyundai's customer service line to inquire  
19 about whether the Defect affected his Venue.

20 38. Defendant Hyundai never informed Plaintiff that his Venue suffered  
21 from the Defect when he purchased his Venue, nor did any of Defendant Hyundai's  
22 marketing materials that Plaintiff reviewed disclose the Defect. All representations  
23

24  
25  
26 <sup>9</sup> See "Motor vehicle thefts in Milwaukee are up 152%. Auto repair businesses say the worst may be yet to come" at  
<https://www.jsonline.com/story/news/solutions/2021/02/03/motor-vehicle-thefts-up-152-milwaukee-so-far-2021/4266701001/> (last visited Sept. 12, 2022).

27 <sup>10</sup> See "Hyundai and Kia thefts hit insurance and appraisal industry" at  
<https://www.ksdk.com/article/news/local/hyundai-kia-thefts-hit-insurance-appraisal-industry/63-24673a34-d557-452c-9fce-f10d6ce94c02> (last visited Sept. 12, 2022).



1 and materials from Defendant Hyundai marketed the vehicle as safe and reliable.

2 39. Plaintiff would not have purchased the vehicle or would not have  
3 purchased it at the price he did had he known about the Class Vehicle's Defect.  
4 Indeed, the Defect reduces the value of his vehicle as other consumers will not pay  
5 as much for a vehicle that is easy to steal and expensive to insure.

6 40. In fact, Plaintiff's insurance rates have already increased dramatically  
7 in the last six months, even though he has not been in an accident and received  
8 traffic citations.

9 41. As a result, Plaintiff has suffered damages in an amount to be  
10 determined at trial.

### 11 CLASS ACTION ALLEGATIONS

12 42. Plaintiff sues on behalf of himself and the proposed Nationwide Class  
13 and Missouri Subclass (together "Class" unless otherwise noted), defined as  
14 follows:  
15

16 **Nationwide Class:** All individuals and entities in the United States  
17 that purchased or leased a Class Vehicle.

18 **Missouri Subclass:** All individuals and entities in the State of  
19 Missouri that purchased or leased a Class Vehicle.  
20

21 Excluded from the Class are Defendant, its agents, affiliates, parents, subsidiaries,  
22 any entity in which Defendant has a controlling interest, any Defendant officer or  
23 director, any successor or assign, and any Judge who adjudicates this case, including  
24 their staff and immediate family.

25 43. Plaintiff reserves the right to amend the class definition.

26 44. This action satisfies the numerosity, commonality, typicality, and  
27 adequacy requirements under Fed. R. Civ. P. 23.  
28

1           a.     **Numerosity**. Plaintiff is representative of the proposed Class.  
2 On information and belief, the Class consists of many thousands of members, far  
3 too many to join in a single action;

4           b.     **Ascertainability**. Class members are readily identifiable from  
5 information in Defendants' possession, custody, and control;

6           c.     **Typicality**. Plaintiff's claims are typical of Class member's  
7 claims as each Class member owns a vehicle with the same defect.

8           d.     **Adequacy**. Plaintiff will fairly and adequately protect the  
9 proposed Class's interests. His interests do not conflict with Class members'  
10 interests and he has retained counsel experienced in complex class action litigation  
11 and data privacy to prosecute this action on the Class's behalf, including as lead  
12 counsel.

13           e.     **Commonality**. Plaintiff and the Class's claims raise  
14 predominantly common fact and legal questions that a class wide proceeding can  
15 answer for all Class members. Indeed, it will be necessary to answer the following  
16 questions:  
17

18                   i.     Whether Defendants designed, manufactured, advertised,  
19 sold, and place the Class Vehicles into the stream of commerce;

20                   ii.    Whether the Class Vehicles were defective as described  
21 above;

22                   iii.   Whether the Defect is a safety and/or security defect that  
23 created a foreseeable risk of harm to Plaintiff and the Class;

24                   iv.    Whether Defendants breached their implied warranties  
25 with the Class regarding the Class Vehicles;

26                   v.     Whether Defendants knew about the Defect and, if so, for  
27 how long;  
28

vi. Whether Defendants concealed the Defect;

vii. Whether Defendants' conduct violates consumer protection statutes, warranty law, and other laws as alleged in this complaint;

viii. Whether the Class has suffered damages because of Defendants' misconduct;

ix. What the proper damages measure is, including the diminution of value and deprivation of the benefit of the bargain; and

x. Whether the Class is entitled to injunctive relief.

Further, common questions of law and fact predominate over any individualized questions, and a class action is superior to individual litigation or any other available method to fairly and efficiently adjudicate the controversy. The damages available to individual plaintiffs are insufficient to make individual lawsuits economically feasible.

### **FIRST CAUSE OF ACTION**

#### **Violation of the Magnuson-Moss Warranty Act, 15 U.S.C. §§ 2301 *et seq.* (On Behalf of Plaintiff and the Class)**

45. Plaintiff repeats and re-alleges each and every allegation contained in the preceding paragraphs as if fully set forth herein.

46. Plaintiff brings this claim on behalf of themselves and the Class against Defendants.

47. Plaintiff and each Class Member are a "consumer" as defined in 15 U.S.C. section 2301(3).

48. Defendants are "supplier[s]" and "warrantor[s]" as defined in 15 U.S.C. section 2301(4)-(5). As a warrantor, Defendants are required to remedy any defect, malfunction or nonconformance of the Class Vehicles within a reasonable time and without charge to the Plaintiff and the Class Members. *Id.* § 2304(a)(1)

49. The Class Vehicles are each a "consumer product" as defined in 15

CLASS ACTION COMPLAINT - 10

1 U.S.C. section 2301(1).

2 50. Title 15 U.S.C. section 2310(d)(1) provides a cause of action for any  
3 consumer who is damaged by the failure of a warrantor to comply with the written  
4 and implied warranties.

5 51. Defendants' warranty is a "written warranty" within the meaning of 15  
6 U.S.C. section 2301(6). Defendants' implied warranty is an "implied warranty"  
7 within the meaning of 15 U.S.C. section 2301(7).

8 52. Defendants expressly warranted any vehicle defect due to materials or  
9 workmanship.

10 53. As a part of the implied warranty of merchantability, Defendants  
11 warranted that the Class Vehicles were fit for their ordinary purpose as safe  
12 passenger motor vehicles, would pass without objection in the trade as designed,  
13 manufactured, and marketed, and were adequately contained, packaged, and  
14 labeled.

15 54. As described above, Defendants' failure and/or refusal to repair the  
16 Defect within the applicable warranty period constitutes a breach of the written and  
17 implied warranties applicable to the Class Vehicles.

18 55. Plaintiff and the Class notified Defendants of the breach within a  
19 reasonable time and/or were not required to do so. Defendants were also on notice  
20 of the Defect from, among other sources, the complaints and service requests it  
21 received from Class Members and its dealers.

22 56. As a result of Defendants' breaches of the written and implied  
23 warranties, and Defendants' failure to remedy the same within a reasonable time,  
24 Plaintiff and the Class have suffered damages.

25 57. Plaintiff and the Class have had sufficient direct dealings with  
26 Defendants or their agents (dealerships and distributors) to establish privity of  
27

1 contract between Defendants and Plaintiff and the Class Members. Nonetheless,  
2 privity is not required here because Plaintiff and the Class Members are intended  
3 third-party beneficiaries of Defendants' written warranty between Defendants and  
4 its dealers. The dealers were not intended to be the ultimate consumers of the Class  
5 Vehicles as the warranty agreements were designed for and intended to benefit  
6 consumers.

7         58. The Class Vehicles share a common defect in that they are  
8 manufactured with defective materials and/or with poor workmanship. Contrary to  
9 Defendants' representations about its vehicles, the Class Vehicles are defective in  
10 manufacture, materials and/or workmanship and are unsafe. The Class Vehicles  
11 share a common defect that prevents the driver from being able to turn off and lock  
12 the vehicle. The Defect occurs within the warranty terms and period.

13         59. Affording Defendants a reasonable opportunity to cure its breach of  
14 written warranties would be unnecessary and futile here. Defendants have long been  
15 on notice of the claims of Plaintiff and Class Members and have refused to  
16 acknowledge the existence of the defect and/or refused to provide a remedy.

17         60. At the time of sale or lease of each Class Vehicle, Defendants knew,  
18 should have known, or were reckless in not knowing of its misrepresentations and  
19 omissions concerning the Defect and inability to perform as warranted, but  
20 nonetheless failed to rectify the situation and/or disclose the Defect. Under the  
21 circumstances, the remedies available under any informal settlement procedure  
22 would be inadequate and any requirement that Plaintiff resort to an informal dispute  
23 resolution procedure and/or afford Defendants a reasonable opportunity to cure its  
24 breach of warranties is excused and thereby deemed satisfied.

25         61. Plaintiff and the Class Members would suffer economic hardship if  
26 they returned their Class Vehicles but did not receive the return of all payments  
27

1 made by them. Because Defendants are refusing to acknowledge any revocation of  
2 acceptance and return immediately any payments made, Plaintiff and the Class  
3 Members have not reaccepted their Class Vehicles by retaining them.

4 62. Pursuant to 15 U.S.C. section 2310(d)(3), the amount in controversy  
5 of Plaintiff's individual claims meets or exceeds the sum of \$25 and the amount in  
6 controversy of this action exceeds the sum of \$50,000, exclusive of interest and  
7 costs. Plaintiff, individually and on behalf of other Class Members, seeks all  
8 damages permitted by law, including diminution in value of their Class Vehicles,  
9 in an amount to be proven at trial.

10 63. In addition, pursuant to 15 U.S.C. section 2310(d)(2), Plaintiff and the  
11 Class Members are entitled to recover a sum equal to the aggregate amount of costs  
12 and expenses (including attorneys' fees based on actual time expended) determined  
13 by the Court to have reasonably been incurred by Plaintiff and the Class Members  
14 in connection with the commencement and prosecution of this action.  
15

16 **SECOND CAUSE OF ACTION**  
17 **Breach of Express Warranty**  
18 **(On Behalf of Plaintiff and the Class)**

19 64. Plaintiff repeats and re-alleges each and every allegation contained in  
20 the preceding paragraphs as if fully set forth herein.

21 65. Plaintiff brings this claim on behalf of themselves and the Class against  
22 Defendants  
23

24 66. Defendants are and were at all relevant times a merchant and seller of  
25 motor vehicles within the meaning of the Uniform Commercial Code and relevant  
26 state law.

27 67. With respect to leases, Defendants are and were at all relevant times a  
28 lessor of motor vehicles within the meaning of the Uniform Commercial Code and



1 relevant state law.

2 68. The Class Vehicles are and were at all relevant times goods within the  
3 meaning of the Uniform Commercial Code and relevant state law.

4 69. Defendants provided all purchasers and lessees of the Class Vehicles  
5 with an express warranty which became a material part of the bargain. Accordingly,  
6 Defendants' express warranty is an express warranty under applicable state law.

7 70. The Warranty formed the basis of the bargain that was reached when  
8 Plaintiff and other members of the Class purchased or leased their Class Vehicles.

9 71. Defendants breached the express warranty through the acts and  
10 omissions described above.

11 72. Plaintiff and the members of the Class have had sufficient direct  
12 dealing with Defendants or their agents (*i.e.*, dealerships and technical support) to  
13 establish privity of contract between Defendants, on one hand, and Plaintiff and  
14 each of the other members of the Class on the other hand. Nonetheless, privity is  
15 not required here because Plaintiff and each of the other members of the Class are  
16 the intended third-party beneficiaries of contracts between Defendants and its  
17 distributors and dealers, and specifically, of Defendants' express warranties. The  
18 dealers were not intended to be the ultimate consumers of the Class Vehicles and  
19 have no rights under the warranty agreements provided with the Class Vehicles; the  
20 warranty agreements were designed for and intended to benefit the consumer only.

21 73. Any attempt by Defendants to disclaim or limit recovery to the terms  
22 of the express warranty is unconscionable and unenforceable here. Specifically, the  
23 warranty limitation is unenforceable because Defendants knowingly sold,  
24 distributed, or leased defective products without informing consumers about the  
25 Defect. The time limits are unconscionable and inadequate to protect Plaintiff and  
26 the members of the Class. Among other things, Plaintiff and the members of the  
27

1 Class did not determine these time limitations and/or did not know of other  
2 limitations not appearing in the text of the warranties, the terms of which were  
3 drafted by Defendants and unreasonable favored Defendants. A gross disparity in  
4 bargaining power and knowledge of the extent, severity, and safety risk of the  
5 Defect existed between Plaintiff and the members of the Class.

6 74. Plaintiff was not required to notify Defendants of the breach because  
7 affording Defendants a reasonable opportunity to cure its breach of their written  
8 warranty would have been futile. Defendants were also on notice of the Defect from  
9 the complaints and service requests it received from members of the Class,  
10 including those formal complaints submitted to NHTSA, and through other internal  
11 sources.

12 75. As a result of Defendants' breach of the applicable express warranties,  
13 owners and/or lessees of the Class Vehicles suffered, and continue to suffer, an  
14 ascertainable loss of money, property, and/or value of their Class Vehicles.  
15 Additionally, as a result of the Defect, Plaintiff and the members of the Class were  
16 harmed and suffered actual damages in that the Class Vehicles are substantially  
17 certain to fail before their expected useful life has run. Had Plaintiff known this  
18 information, he would not have purchased or would have paid less for his Class  
19 Vehicles.  
20

21 76. As a result of Defendants' breach of the express warranty, Plaintiff and  
22 the members of the Class are entitled to legal and equitable relief against  
23 Defendants, including actual damages, specific performance, attorney's fees, costs  
24 of suit, and other relief as appropriate.

25  
26 **THIRD CAUSE OF ACTION**

27 **Breach of the Implied Warranty of Merchantability**  
28 **(On Behalf of Plaintiff and the Class)**

1           77. Plaintiff repeats and re-alleges each and every allegation contained in  
2 the preceding paragraphs as if fully set forth herein.

3           78. Plaintiff brings this claim on behalf of himself and the Class against  
4 Defendants.

5           79. Defendants are and were at all relevant times a merchant and seller of  
6 motor vehicles within the meaning of the Uniform Commercial Code and relevant  
7 state law.

8           80. With respect to leases, Defendants are and were at all relevant times a  
9 lessor of motor vehicles within the meaning of the Uniform Commercial Code and  
10 relevant state law.

11           81. The Class Vehicles are and were at all relevant times goods within the  
12 meaning of the Uniform Commercial Code and relevant state law.

13           82. A warranty that the Class Vehicles were in merchantable condition and  
14 fit for the ordinary for which vehicles are used is implied by law under the Uniform  
15 Commercial Code and relevant state law.

16           83. Defendants knew or had reason to know of the specific use for which  
17 the Class Vehicles were purchased or leased. Defendants directly sold and marketed  
18 the Class Vehicles to customers through their agents, the authorized dealers, like  
19 those from whom Plaintiff and the members of the Class bought or leased their  
20 vehicles, for the intended purpose of consumers purchasing the vehicles.  
21 Defendants knew that the Class Vehicles would and did pass unchanged from the  
22 authorized dealers to Plaintiff and the members of the Class, with no modification  
23 to the defective Class Vehicles.  
24

25           84. Defendants provided Plaintiff and the members of the Class with an  
26 implied warranty that the Class Vehicles and their components and parts are  
27 merchantable and fit for the ordinary purposes for which they were sold.  
28

1           85. This implied warranty included, among other things: (i) a warranty that  
2 the Class Vehicles that were manufactured, supplied, distributed, and/or sold by  
3 Defendants were safe and reliable for providing transportation; and (ii) a warranty  
4 that the Class Vehicles would be fit for their intended use while the Class Vehicles  
5 were being operated.

6           86. Contrary to the applicable implied warranties, the Class Vehicles at the  
7 time of sale and thereafter were not fit for their ordinary and intended purpose of  
8 providing Plaintiff and the members of the Class with reliable, durable, and safe  
9 transportation. Instead, the Class Vehicles were and are defective at the time of sale  
10 or lease and thereafter as more fully described above. Defendants knew of this  
11 defect at the time these sale or lease transactions occurred.

12           87. As a result of Defendants' breach of the applicable implied warranties,  
13 Plaintiff and the members of the Class of the Class Vehicles suffered an  
14 ascertainable loss of money, property, and/or value of their Class Vehicles.  
15 Additionally, as a result of the Defect, Plaintiff and the members of the Class were  
16 harmed and suffered actual damages in that the Class Vehicles are substantially  
17 certain to fail before their expected useful life has run.

18           88. Defendants' actions, as complained of herein, breached the implied  
19 warranty that the Class Vehicles were of merchantable quality and fit for such use  
20 in violation of the Uniform Commercial Code and relevant state law.

21           89. Plaintiff and the members of the Class have complied with all  
22 obligations under the warranty, or otherwise have been excused from performance  
23 of said obligations as a result of Defendants' conduct described herein.

24           90. Plaintiff and the members of the Class were not required to notify  
25 Defendants of the breach because affording Defendants a reasonable opportunity to  
26 cure its breach of warranty would have been futile. Defendants were also on notice  
27

1 of the Defect from the complaints and service requests it received from Plaintiff and  
2 the members of the Class and through other internal sources.

3 91. As a direct and proximate cause of Defendants' breach, Plaintiff and  
4 the members of the Class suffered damages and continue to suffer damages,  
5 including economic damages at the point of sale or lease and diminution of value  
6 of their Class Vehicles. Additionally, Plaintiff and the members of the Class have  
7 incurred or will incur economic damages at the point of repair in the form of the  
8 cost of repair as well as additional losses. Had Plaintiff and the Class known this  
9 information, they would not have purchased or would have paid less for their Class  
10 Vehicles.

11 92. As a direct and proximate result of Defendants' breach of the implied  
12 warranty of merchantability, Plaintiff and the members of the Class have been  
13 damaged in an amount to be proven at trial.

#### 14 **FOURTH CAUSE OF ACTION**

#### 15 **Violation of the California Consumers Legal Remedies Act** 16 **California Civil Code §§ 1750, *et seq.*** 17 **(On Behalf of Plaintiff and the Class)**

18 93. Plaintiff repeats and re-alleges each and every allegation contained in  
19 the preceding paragraphs as if fully set forth herein.

20 94. Plaintiff bring this claim on behalf of himself and the Class.

21 95. This cause of action is brought under the CLRA. Plaintiff and members  
22 of the Class are consumers as defined by California Civil Code § 1761(d), and the  
23 Class Vehicles constitute goods within the meaning of the CLRA.

24 96. Defendants have violated, and continues to violate, the CLRA by  
25 engaging in the following deceptive practices proscribed by California Civil Code  
26 § 1770(a) in connection with transactions intended to result in, and that did result  
27 in, the sale and/or lease of the Class Vehicles to Plaintiff and members of the Class  
28

1 in violation of, *inter alia*, the following provisions:

- 2 a. Representing that the goods have characteristics, uses, or benefits
- 3 which they do not have (Cal. Civ. Code §1770(a)(5));
- 4 b. Representing that that goods are of a particular standard, quality, or
- 5 grade if they are of another (Cal. Civ. Code § 1770(a)(7));
- 6 c. Advertising goods with the intent not to sell them as advertised (Cal.
- 7 Civ. Code § 1770(a)(9));
- 8 d. Representing that a transaction involves rights, remedies, or
- 9 obligations that it does not have or involve (Cal. Civ. Code §
- 10 1770(a)(14)); and
- 11 e. Representing that the goods have been supplied in accordance with
- 12 a previous representation when they have not (Cal. Civ. Code §
- 13 1770(a)(16)).
- 14

15 97. Plaintiff and members of the Class, in purchasing/leasing and using the  
16 Class Vehicles, did reasonably act in response to Defendants' above representations  
17 or would have considered the omitted facts set forth herein as material to their  
18 purchasing/leasing decision. Plaintiff and members of the Class have suffered  
19 damages by the wrongful acts and practices of Defendants that are in violation of  
20 California Civil Code § 1781.

21 98. Defendants engaged in unfair and deceptive acts, omissions, and  
22 practices by representing to Plaintiff and the members of the Class that the Class  
23 Vehicles were safe, reliable, and free from defects of workmanship and failing to  
24 disclose that the Class Vehicles had the Defect which rendered the Class Vehicles  
25 easy to steal, unsafe, and worth less than they should be, if they did not have the  
26 Defect

27 99. The representations regarding the Class Vehicles were material to  
28



1 Plaintiff and the members of the Class. Defendants intended that Plaintiff and the  
2 members of the Class would rely on these representations and they did, in fact, rely  
3 on the representations.

4 100. Had Plaintiff and the Class known this information, they would not  
5 have purchased or would have paid less for their Class Vehicles.

6 101. In accordance with California Civil Code § 1780(a), Plaintiff and  
7 members of the Class seek injunctive relief for Defendants' violations of the CLRA.

8 102. In accordance with California Civil Code §§ 1782(a) and (d), Plaintiff  
9 has provided Defendants with the appropriate notice and demand and will amend  
10 this Complaint upon receiving Defendants' response.

11 **FIFTH CAUSE OF ACTION**

12 **Unlawful, Unfair and Fraudulent Business Practices in Violation of**  
13 **California Consumers Business and Professions Code §§ 17200, *et seq.***  
14 **(On Behalf of Plaintiff and the Class)**

15 103. Plaintiff repeats and re-alleges each and every allegation contained in  
16 the preceding paragraphs as if fully set forth herein.

17 104. Plaintiff brings this claim on behalf of himself and the Class.

18 105. The UCL defines unfair competition to include any "unfair,"  
19 "unlawful," or "fraudulent" business act or practice.

20 106. Defendants have violated, and continues to violate, the UCL by  
21 representing to Plaintiff and the members of the Class that the Class Vehicles were  
22 safe, reliable, and free from defects of workmanship and failing to disclose that the  
23 Class Vehicles had the Defect which rendered the Class Vehicles easy to steal,  
24 unsafe, and worth less than they should be, if they did not have the Defect

25 107. By engaging in the above-described acts and practices, Defendants  
26 have committed an unfair business practice within the meaning of the UCL. Plaintiff  
27 and the Class members have suffered substantial injury they could not have  
28

1 reasonably avoided other than by not purchasing or leasing the Class Vehicles.

2 108. Defendants' acts and practices have deceived and/or are likely to  
3 deceive the Class members and the public and thus constitute a fraudulent business  
4 practice. Defendants uniformly marketed and advertised the Class Vehicles as safe,  
5 reliable, and free from defect when, in fact, they are not because they contain the  
6 Defect which rendered the Class Vehicles easy to steal, unsafe, and worth less than  
7 they should be, if they did not have the Defect.

8 109. As discussed above, Plaintiff and members of the Class purchased  
9 and/or leased the Class Vehicles directly from Defendants and/or their authorized  
10 agents. Plaintiff and members of the Class were injured in fact and lost money as a  
11 result of such acts of unfair competition.

12 110. The injuries suffered by Plaintiff and members of the Class greatly  
13 outweigh any potential countervailing benefit to consumers or to competition. The  
14 injuries suffered by Plaintiff and the Class should have or could have been  
15 reasonably avoided.

16 111. Defendants received the funds paid by Plaintiff and the Class members  
17 and profited by misrepresenting the properties and quality of the Class Vehicles that  
18 they otherwise would not have sold. Defendants' revenues attributable thereto are,  
19 thus, directly traceable to the substantial amount of money paid by Plaintiff and  
20 members of the Class.

21 112. Unless Defendants are enjoined from continuing to engage in the  
22 unlawful, unfair, and fraudulent business acts and practices as described herein,  
23 which is ongoing, Plaintiff and members of the Class will continue to be injured by  
24 Defendants' conduct and as a result do not have an adequate remedy at law. Plaintiff  
25 and members of the Class request this Court to enjoin Defendants from continuing  
26 to violate the UCL.  
27

113. The unlawful, unfair, and fraudulent conduct described herein is ongoing and continues to this date. Plaintiff and members of the Class are therefore entitled to relief as appropriate for this cause of action.

### **SIXTH CAUSE OF ACTION**

#### **Violation of the Song-Beverly Consumer Warranty Act Cal. Civ. Code § 1791, *et seq.* (On Behalf of Plaintiff and the Class)**

114. Plaintiff repeats and re-alleges each and every allegation contained in the preceding paragraphs as if fully set forth herein.

115. Plaintiff brings this claim on behalf of themselves and the Class.

116. Plaintiff and the Class members who purchased or leased the Class Vehicles in California are “buyers” within the meaning of Cal. Civ. Code § 1791(b).

117. The Class Vehicles are “consumer goods” within the meaning of Cal. Civ. Code § 1791(a).

118. Defendants are a “manufacturer[]” of the Class Vehicles within the meaning of Cal. Civ. Code § 1791(j).

119. Defendants impliedly warranted to Plaintiff and the Class members that the Class Vehicles were “merchantable” within the meaning of Cal. Civ. Code §§ 1791.1(a) and 1792. However, the Class Vehicles do not have the quality that a buyer would reasonably expect.

120. Cal. Civ. Code § 1791.1(a) states: “Implied warranty of merchantability” or “implied warranty that goods are merchantable” means that the consumer goods meet each of the following:

- a. Pass without objection in the trade under the contract description.
- b. Are fit for the ordinary purposes for which such goods are used.
- c. Are adequately contained, packaged, and labeled.

1 d. Conform to the promises or affirmations of fact made on the container  
2 or label.

3 121. Plaintiff and members of the Class purchased or leased the Class  
4 Vehicles, manufactured by Defendants, from Defendants by and through their  
5 authorized agents for retail sales, or were otherwise expected to be the eventual  
6 purchasers of the Class Vehicles when bought from a third party. At all relevant  
7 times, Defendants were the manufacturers, distributors, warrantors, and/or sellers  
8 of the Class Vehicles. Defendants knew or had reason to know of the specific use  
9 for which the Class Vehicles were purchased or leased.

10 122. Defendants have provided Plaintiff and members of the Class with one  
11 or more express warranties.

12 123. Plaintiff and members of the Class experienced the Defect within the  
13 warranty periods, but Defendants failed to inform Plaintiff and members of the  
14 Class of the existence of the Defect and associated safety hazard, and failed to  
15 provide a suitable repair or replacement of the defective components free of charge  
16 within a reasonable time.

17 124. Defendants impliedly warranted that the Class Vehicles were in  
18 merchantable condition and fit for the ordinary purpose for which vehicles are used.

19 125. Contrary to the applicable implied warranties, the Class Vehicles'  
20 were not free from the Defect, making the Class Vehicles unfit for their ordinary  
21 and intended purpose of providing Plaintiff and the Class members with reliable,  
22 durable, and safe transportation, would not pass without objection in trade, were not  
23 adequately labeled, and did not conform to the promises and affirmation on their  
24 labels.

25 126. The Defect is inherent and was present in each Class Vehicle at the  
26 time of sale.

1           127. Defendants were provided notice of the Defect by numerous consumer  
2 complaints made to authorized dealers nationwide, complaints to NHTSA and,  
3 upon information and belief, through Defendants' own testing. Affording  
4 Defendants a reasonable opportunity to cure its breach of implied warranties would  
5 be unnecessary and futile here because Defendants have known of and concealed  
6 the Defect and, on information and belief, have refused to repair the Defect free of  
7 charge within a reasonable time.

8           128. Defendants have breached its express and implied warranties in  
9 violation of Cal. Civ. Code § 1791, *et seq.*

10           129. As a direct and proximate result of Defendants' breach of its express  
11 and/or implied warranties, Plaintiff and members of the Class have been damaged  
12 in an amount to be proven at trial.

13           130. Plaintiff and members of the Class have been excused from  
14 performance of any warranty obligations as a result of Defendants' conduct  
15 described herein.

16           131. Plaintiff and members of the Class seek actual damages, costs,  
17 attorneys' fees, and statutory damages as a result of Defendants' willful conduct  
18 alleged herein. Plaintiff and members of the Class also seek reimbursement,  
19 replacement of the defective components, and/or the revocation of the purchase of  
20 lease of their Class Vehicles, and all other relief available under Cal. Civ. Code §  
21 1794.

22           132. The applicable statute of limitations for the implied warranty claim has  
23 been tolled by the discovery rule and/or fraudulent concealment.

24                           **SEVENTH CAUSE OF ACTION**  
25                           **Unjust Enrichment**  
26                           **(On Behalf of Plaintiff and the Class)**  
27

28           133. Plaintiff repeats and re-alleges each and every allegation contained in  
CLASS ACTION COMPLAINT - 24

1 the preceding paragraphs as if fully set forth herein.

2 134. Plaintiff brings this claim for unjust enrichment in the alternative to  
3 the previously plead claims, Causes of Action One through Six.

4 135. Substantial benefits have been conferred on Defendants by Plaintiff  
5 and the Class through the purchase and lease of the Class Vehicles with the Defect.  
6 Defendants knowingly and willingly accepted and enjoyed these benefits.

7 136. Defendants either knew or should have known that the payments  
8 rendered by Plaintiff and the Class were given and received with the expectation  
9 that the Class Vehicles would have the qualities, characteristics, and safety  
10 represented by Defendants. As such, it would be inequitable for Defendants to retain  
11 the benefit of the payments under these circumstances without payment of the value  
12 to Plaintiff and the Class.

13 137. Plaintiff and the Class are entitled to recover from Defendants all  
14 amounts wrongfully collected and improperly retained by Defendants, plus interest  
15 thereon. Plaintiff and the Class seek actual damages, injunctive and declaratory  
16 relief, attorneys' fees, costs, and any other just and proper relief available under the  
17 law.

#### 18 **EIGHTH CAUSE OF ACTION**

#### 19 **Violation of the Missouri Merchandising Practice Act** 20 **(On Behalf of Plaintiff and the Missouri Sub-Class)**

21 138. Plaintiff repeats and re-alleges each and every allegation contained in  
22 the preceding paragraphs as if fully set forth herein.

23 139. Plaintiff brings this claim for unjust enrichment in the alternative to  
24 the previously plead claims, Causes of Action One through Seven.

25 140. Plaintiff, Class Members, and Defendants are all "person[s]" for  
26 purposes of the Merchandising Practices Act ("MMPA"). Mo. Rev. Stat. § 407.010,  
27 *et seq.*



1           141. The Class Vehicles are “merchandise” for purposes of the MMPA.

2           142. Plaintiff and Class Members purchased the Class Vehicles for  
3 personal, family or household purposes.

4           143. Pursuant to the MMPA, it is unlawful for a person to use “any  
5 deception, fraud, false pretense, false promise, misrepresentation, unfair practice or  
6 the concealment, suppression, or omission of any material fact” in connection with  
7 the sale of merchandise in the State of Missouri. Such acts are unlawful whether  
8 committed before, during or after the sale, advertisement, or solicitation in question.

9           144. Pursuant to the MMPA, any person who purchases merchandise for  
10 personal, family or household purposes, and suffers an ascertainable loss of money  
11 as a result of the use of unlawful acts in connection with such sale, may bring a civil  
12 action to recover actual and punitive damages from the person that committed the  
13 unlawful act.

14           145. Defendants engaged in unfair and deceptive acts, omissions, and  
15 practices as defined by the MMPA by representing to Plaintiff and the members of  
16 the Class that the Class Vehicles were safe, reliable, and free from defects of  
17 workmanship and failing to disclose that the Class Vehicles had the Defect which  
18 rendered the Class Vehicles easy to steal, unsafe, and worth less than they should  
19 be, if they did not have the Defect.

20           146. The representations regarding the Class Vehicles were material to  
21 Plaintiff and the members of the Class. Defendants intended that Plaintiff and the  
22 members of the Class would rely on these representations and they did, in fact, rely  
23 on the representations.

24           147. Plaintiff and members of the Class, in purchasing/leasing and using the  
25 Class Vehicles, did reasonably act in response to Defendants’ above representations  
26 or would have considered the omitted facts set forth herein as material to their  
27

1 purchasing/leasing decision. Plaintiff and members of the Class have suffered  
2 damages by the wrongful acts and practices of Defendants that are in violation of  
3 1781 Mo. Rev. Stat. § 407.020.

4 148. Had Plaintiff and the Class known this information, they would not  
5 have purchased or would have paid less for their Class Vehicles.

6 149. Plaintiff and members of the Class have been damaged in an amount  
7 to be proven at trial.

8 150. As a result of Defendants' actions and omissions, Plaintiff and the  
9 members of the Class are entitled to legal and equitable relief against Defendants,  
10 including actual damages, attorney's fees, costs of suit, specific performance,  
11 equitable and other relief as appropriate. 1781 Mo. Rev. Stat. § 407.025.  
12

### 13 **PRAYER FOR RELIEF**

14 WHEREFORE, Plaintiff, on behalf of himself and all others similarly  
15 situated, respectfully request that this Court enter judgment against Defendants and  
16 in favor of Plaintiff and the Class, and pray for judgment as follows:

- 17 a) An order certifying the proposed Class, designating Plaintiff as named  
18 representative of the Class, and designating the undersigned as Class  
19 Counsel;
- 20 b) A declaration that Defendants are financially responsible for notifying all  
21 the Class Members of the Defect;
- 22 c) An order enjoining Defendants from further deceptive distribution, sales,  
23 and lease practices with respect to the Class Vehicles; compelling  
24 Defendants to issue a voluntary recall for the Class Vehicles pursuant to  
25 49 U.S.C. section 30118(a); compelling Defendants to repair and  
26 eliminate the Defect from every Class Vehicle; enjoining Defendants  
27 from selling the Class Vehicles with the misleading information; and/or  
28

- 1 compelling Defendants to reform its warranty in a manner deemed to be  
 2 appropriate by the Court, to cover the injury alleged and to notify all Class  
 3 Members that such warranty has been reformed;
- 4 d) Damages and restitution in an amount to be proven at trial;
- 5 e) Any and all remedies provided pursuant to the express and implied  
 6 warranty laws, common law fraud by concealment laws, and consumer  
 7 protection statutes alleged herein;
- 8 f) An award to Plaintiff and the Class of compensatory, exemplary, and  
 9 statutory damages as permitted by law, including interest, in an amount to  
 10 be proven at trial;
- 11 g) A declaration that Defendants must disgorge, for the benefit of the Class,  
 12 all or part of the ill-gotten profits it received from the sale or lease of Class  
 13 Vehicles, and/or make full restitution to Plaintiff and the Class Members;
- 14 h) An award of pre-judgment and post-judgment interests, as provided by  
 15 law;
- 16 i) An award of attorneys' fees and recoverable litigation expenses as may  
 17 be allowable under applicable law;
- 18 j) Leave to amend the Complaint to conform to the evidence produced at  
 19 trial; and
- 20 k) Such other relief as the Court may deem appropriate under the  
 21 circumstances.

### 22 JURY TRIAL DEMAND

23 Plaintiff hereby demands a jury trial for any and all issues in this action so  
 24 triable.

25 Dated: September 19, 2022

Respectfully submitted,

26 By: /s/ Michael F. Ram

27 Michael F. Ram

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